IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 749 of 1998
in
SPECIAL CIVIL APPLICATION No 476 of 1997

with

LETTERS PATENT APPEAL No 762 of 1998
in
SPECIAL CIVIL APPLICATION No 10116 of 1996

with

LETTERS PATENT APPEAL No 780 of 1998
in
SPECIAL CIVIL APPLICATION No 8580 of 1996

with

LETTERS PATENT APPEAL No 1281 of 1998
in
SPECIAL CIVIL APPLICATION No 4950 of 1998

with

LETTERS PAPTENT APPEAL No 1045 of 2002
in
SPECIAL CIVIL APPLICATION No 5192 of 1999

with
CIVIL APPLICATION No 8160 of 2002
and
CIVIL APPLICATION No 8265 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA Sd/-
and
HON'BLE MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 to 5 No

INDIAN FARMERS' FERTILIZER CO OPERATIVE LTD

Versus

GUJARAT MAZDOOR PANCHAYAT

Appearance:

1. LPA No. 749/98 allied matters

MR KS NANAVATI with MR MB BUCH for SINGHI & BUCH ASSO. for Appellant

MR NR SHAHANI & DR. MUKUL SINHA for Respondents

MR KB TRIVEDI ADDL ADVOCATE GENERAL instructed by ld. P.P. Mr.A.D. Oza for Respondent-State

MR MR SHAH for Respondent-Union of India

CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

and

HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 16/10/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.H.WAGHELA)

1. Heard learned senior counsel Mr.K.S.Nanavati, who, on instructions and in presence of Mr.R.P.Singh, Joint General Manager (Corporate Affairs) and Mr.A.K.Sinha, Joint General Manager (Personnel & Administration), submitted the draft consent terms in terms of which the appeals were prayed to be disposed.

2. All these Letters Patent Appeals under Clause 15 of the Letters Patent admittedly call into question three judgments of this Court and are contested by the same set of parties being Indian Farmers Fertilizer Cooperative Limited (IFFCO)-the principal employer, the workmen employed under it as contract labour who were represented by Gujarat Majdoor Sabha & Gujarat Majdoor Panchayat. The State was represented by the learned Additional Advocate General. There was a consensus that the three judgments of this court in Special Civil Applications

Nos. (1) 10116 of 1996, 8580 of 1996 and 476 of 1997, (2) 4950 of 1998 and (3) 5192 of 1999 were related to the Notification No.GU-212-CLA-1096-H.75-M(3) dated 18.10.1996 and No.GU98-101-CLA-1096-H.75-M(3) dated 3.6.1998 issued by the Government under section 10 of the Contract Labour (Regulation & Abolition) Act, 1970. The operation and implementation of the said notifications as also the effect of the judgments of the Supreme Court in AIR INDIA STATUTORY CORPORATION v. UNITED LABOUR UNION reported in [(1997) 9 SCC 377] and in STEEL AUTHORITY OF INDIA LTD. V. NATIONAL UNION WATERFROND WORKERS reported in [(2001) 7 SCC 1] have resulted into disputes among the principal employer and the contract workmen, most of which are required to be resolved in the adjudication pending before the Industrial Tribunal at Ahmedabad in the form of Reference (IT) No.106 of 2003. It was also submitted that the aforesaid notifications in question were related specifically to the factory of the employer, i.e. IFFCO in its Kalol unit. Therefore, no other party, industry or workmen were likely to be affected if the said notifications were set aside by consent. It was also stated that the workmen likely to be affected by such order were represented by their Union, who, in turn, were represented by learned counsel Dr.Mukul Sinha. There was a general consensus that the whole issue of abolition of contract labour in the particular processes, operations, works and activities in the Kalol Unit of IFFCO could be reconsidered in the interest of justice and industrial peace.

3. Accordingly, the main contesting parties arrived at specific conditions on which these Letters Patent Appeals could be disposed. These conditions were reduced to writing and placed on record in form of the Draft Consent Terms, with the signature of the learned counsel of the parties and it was prayed that the appeals may be disposed in those terms. It would be proper to reproduce the signed Consent Terms as under:-

" CONSENT TERMS

1. The Notifications No.GU-212-CLA-1096-H. 75-M(3) dated 18.10.1996 and No.GU-98-101-CLA-1096-H.75.M(3) dated 3.6.1998 issued by Government of Gujarat prohibiting the engagement of Contract Labour in the following five activities in IFFCO, Kalol to be quashed and set aside and the Government of Gujarat be directed to reconsider the issue of the engagement of Contract Labour in the following five activities

in IFFCO, Kalol afresh in accordance with law within a period of four months from the date of passing of the order in the Letters Patent Appeals;

a) Stacking of filled up urea bags on the platform after manufacturing process is over and pending loading into the railway wagons or trucks;

b) Loading, unloading of urea bags into the trucks, railway wagons;

c) General cleaning;

d) Collecting, bagging, standardizing spilled urea on hopper floor etc.; and

e) Handling of spilled material and attending to cleaning of bagging floor, reclaim machine etc.

2. While taking the decision as required in the para (1), the Government shall follow the due procedure of law and take into account all relevant considerations including the factors mentioned in section 10 (2) (a) to (d) of the Contract Labour (Regulation & Abolition) Act, 1970 and the observations of the Ld. Single Judge in its common judgment in SCA No.8580/96 dated 6.3.98.

3. It is clarified that while setting aside the notifications dated 18.10.96 and 3.6.98, the Honourable Division Bench has not expressed any opinion on merit regarding the validity or otherwise of the aforesaid two notifications or the findings and observations of the Ld. Single Judge in the aforesaid common judgment and the Government of Gujarat shall take the decision as required under para 1 without being influenced in any manner by the present order setting aside the aforesaid two notifications.

4. In case the Government decides to prohibit the engagement of contract labour in the five activities in IFFCO, Kalol, as mentioned in para 1, it is agreed that it will be open to the concerned workmen to contend before the Tribunal in Ref. No.106/03 that regularization, if any, should be given effect from the date of the

aforesaid notifications and it would be open for IFFCO to dispute the said claim.

5. It is further clarified that the Industrial Tribunal, Ahmedabad, while adjudicating Reference No.106/03 shall take into consideration the factum of the notifications dated 18.10.96 and 3.6.98 having been in force and have remained in existence for the period from 18.10.96 and 3.6.98 respectively till the date of signing of this consent terms and shall also consider the contentions of the parties as also the other objections in that regard.

6. The Reference (IT) No.106 of 2003 before the Industrial Tribunal at Ahmedabad shall be decided preferably within a period of one year and the Tribunal may be given suitable directions in this regard. This is without prejudice to the rights and contentions of both the parties.

7. All the 335 persons whose names are listed in the Reference (IT) No.106 of 2003 shall be paid a lumpsum amount equivalent to 25% of the gross salary on the basis of the minimum scale of IFFCO, Kalol for the period from 15.5.2000 to 2.6.2002 based on the attendance as already certified by the concerned contractor in consideration of the union agreeing to the quashing of the above two notifications being Notification Nos.GU-212-CLA-1096-H.75-M(3) dated 18.10.96 and No.GU-98-101-CLA-1096-H-75.M(3) dated 3.6.98. The aforesaid payment shall be made to the workmen concerned on or before 24th October, 2003 by IFFCO in presence of the concerned contractor's representative and representative of the Union upon proper identification by the representative. The Union shall be furnished with the calculations in relation to the aforesaid payments. In case there is any dispute regarding the amounts payable, it shall be open for the parties to settle such disputes by mutual consultation.

8. It is distinctly understood by the parties that IFFCO is making this payment without in any manner admitting its liabilities to make this payment and the fact that IFFCO has made this payment shall not be used by the workmen in the pending reference or in any other proceedings for any purpose.

9. The direction given by the Ld.Single Judge in SCA No.5192/99 regarding the payment of 25% of the gross salary on the basis of the minimum scale at IFFCO, Kalol till the reference as mentioned in para (5) is decided be set aside. This however, will not preclude or bar the workmen from claiming appropriate relief for the same period which the Tribunal would decide on its own merits after hearing the parties. It is agreed that in case the award is made in favour of the workmen and any monetary relief is granted for the period between 15.5.2000 and 2.6.2002, the amount paid under clause 7 would be adjusted.

10. In view of the aforesaid agreements, the parties request the Honourable Division Bench to pass appropriate orders in the Letters Patent Appeals Nos.749/98 in SCA 476/97, LPA 726/98 in SCA 10116/96, LPA 780/98 in SCA 8580/96, LPA 1281/98 in SCA 4950/98 and LPA 1045/02 in SCA 5192/99 to incorporate the agreed terms as mentioned hereinabove resulting in:-

A) Setting aside of the Notifications No.GU-2212-CLA/1096-H.75-M(3) dated 18.10.96 and No.GU-98-101-CLA-1096-H.75-M(3) dated 3.6.98 issued by Government of Gujarat prohibiting the engagement of contract labour in the five activities in IFFCO, Kalol as mentioned in para (1).

B) The judgment and orders of the Ld. Single Judge in relation to SCA No.10116/96 and SA No.476/97 in respect to the notification No.GU-212-CLA-1096-H.75-M(3) dated 18.10.96 is set aside, save and except the observations regarding "Stacking of filled up urea bags on the platform after manufacturing process is over and pending loading into the railway wagons or trucks."

C) The judgment and order of the Ld.Single Judge in relation to SCA No.8580/96 is clarified to the extent that the findings of the Ld. Single Judge regarding the operation of stacking, loading and unloading of urea bags etc. would be treated as observations of the Ld. Single Judge to be considered by Government of Gujarat for taking a decision under para 1 alongwith all other relevant considerations as mentioned in

para 2.

D) Judgment and order of the Ld. Single Judge in SCA No.5192/99 is confirmed, except that the directions where IFFCO has been directed to pay 25% of the gross salary on the basis of the minimum scale of IFFCO, Kalol till the reference for the absorption of the concerned workmen was to be finalized is set aside.

E) Directing the payment as mentioned in para (7) of these consent terms. "

4. Learned Additional Advocate General submitted that, without admitting any of the allegations made in the original special civil applications or in the letters patent appeals, the Government would not have any objection to reconsider the matter in terms of the orders that may be passed in terms of the consensus. Accordingly, we dispose these appeals with the order as under:-

The Notification No.GU-212-CLA-1096-H.75-M(3) dated 18.10.1996 and No.GU-98-101-CLA-1096-H.M(3) dated 3.6.1998 issued by the Government of Gujarat under section 10 of the Contract Labour (Regulation & Abolition) Act, 1970 to prohibit engagement of contract labour in the five activities in IFFCO, Kalol Unit are set aside with the direction to the State Government to reconsider the matter of prohibition of engagement of contract labour in the same activities in the same Unit and issue a fresh notification in that regard within a period of four months after following the procedure prescribed in the provisions of section 10 of the Act and keeping in view the observations made in the common judgment dated 6.3.1998 in Special Civil Application No.8580 of 1996.

5. Since the issue of prohibition of employment of contract labour in the processes and operations in question has been agitated and reagitated since about a decade and the successive notifications have only locked the benefits in litigation on technical or substantial grounds, it can be expected that the Government shall take necessary precautions while reconsidering the whole matter and in drafting and issuing the fresh notification.

6. The parties shall abide by the consent terms as reproduced hereinabove. The orders in the original Special Civil Application Nos.476 of 1997, 10116 of 1996, 8580 of 1996, 4950 of 1998 and 5192 of 1999 shall stand modified in terms of the consent terms, the aforesaid observations and directions. We further direct, by consent, that the parties herein shall be given an opportunity of being heard or submit their representations in writing without there being a necessity to record oral evidence. The State Government shall, after receipt of such material and the necessary consultation, without there necessarily being a formal reference to or advice of the State Advisory Board under section 4 of the Contract Labour (Regulation & Abolition) Act, 1970 and considering the material and submissions, take decision legally consistent with the provisions of the Act and the policy underlying the Act. We clarify, out of abundant caution, that the notifications are set aside as aforesaid without expressing any opinion on the merits of the rival submissions and only on the basis of the consensus arrived at. Similarly, the clarification made by the parties in para 5 of the consent terms will be considered by the Industrial Tribunal in adjudicating Reference (IT) No.106 of 2003.

7. We find it proper to place on record our appreciation of the conciliatory approach adopted by the learned counsel of the parties with the hope that the surviving litigation in the form of the aforesaid reference pending in the Industrial Tribunal shall also be expeditiously disposed in the same spirit. We are assured by the learned counsel that no unnecessary adjournment shall be sought in the proceedings before the Industrial Tribunal and the parties shall extend their fullest co-operation in the earliest possible resolution of their disputes. We also request the Industrial Tribunal concerned to accord appropriate priority to the aforesaid reference in view of the fact that, although the reference is numbered as Reference (IT) No.106 of 2003, it happens to be the culmination of disputes which are pending since a decade. With these observations, the appeals are disposed with no order as to costs. All the Civil Applications in the Appeals are also disposed as rejected as having become infructuous.

Sd/-

(D.H.Waghela,J.)

Sd/-

(D.A. Mehta, J.)

(KMG Thilake)